IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH A' KOLKATA

ITA No.532/Kol/2011
Assessment Year: 2006-07

INCOME TAX OFFICER
WARD-56(3), KOLKATA

Vs

RAJESH KR GARG
PAN NO:ADLPG8413F

S V Mehrotra, AM and Mahavir Singh, JM

Dated: August 05, 2011

Appellant Rep by: Shri S K Roy
Respondent Rep by: Shri Subash Agarwal

Income tax – Section 194C – Whether when the assessee has received Form 15I from the payee and no deduction is made on that basis, no disallowance can be made u/s 194C only for the reason that the forms were not submitted in time before the jurisdictional CIT.

Assessee is in the business of transportation of goods through hired vehicles, whom payment was made of Rs.28.01 in respect of 42 vehicles and actual payment was exceeding Rs.50,000/- per vehicle. Assessee contended that he received Form 15-I from vehicle owners for nondeduction of tax, hence tax was not deducted as per section 194C (3)(i) of the Act. AO dismissed the claim stating that as the assessee had failed to file Form No. 15-I with the concerned CIT, the authenticity of receiving of Form No. 15-I from the truck owners had not been discharged. Accordingly, he disallowed hire charges expenses of Rs.28,01,585/- by invoking provisions of section 40(a)(ia) of the Act.

CIT(A) deleted the addition stating that the act does not say that Form 15I is to be taken as non-est for non filing of From 15I with the jurisdictional CIT. Form No. 15-I comes into effect before the actual payment or crediting to account takes place, whereas, the due date for furnishing the particulars in 15-J is 30th June following the financial year. The appellant was to stop deduction of tax on payments as and when he received Form No. 15-I from the sub-contractor. Had the AO doubted about existence of Form No. 15-I at the time of making payments he got ample opportunity of examination of the same during remand proceedings but he had not pointed out any defect in Form 15I. Thus, the addition was deleted.

After hearing both the parties, the ITAT held that,

++ the assessee had obtained Form 15-I and filed during the course of assessment proceedings but only failed to file before the concerned AO. In the case of Shri Vipin P. Mehta, the ITAT held "that apart from the inference that the assessee filed the

declaration only when the Assessing Officer proposed the disallowance of the interest by invoking the section 40(a) (ia) in the office of the CIT(TDS) as required by section 197A(2), there is no other evidence in their possession to hold that the declarations were not submitted by the payees of the interest to the assessee at the time when the payments were made. Without disproving the assessee's claim on the basis of other evidence, except by way of inference, it would not be fair or proper to discard the claim. AO has not recorded any statements from the payees of the interest to the effect that they did not file any declarations with the assessee at the appropriate time. In the absence of any such direct evidence, the assessee's claim cannot be rejected. Sub-section 1A of Section 197A merely requires a declaration to be filed by the payee of the interest and once it is filed the payer of the interest has no choice except to desist from deducting tax from the interest. The subsection does not impose any obligation on the payer to find out the truth of the declarations filed by the payee. Even if the assessee has delayed the filing of the declarations with the office of the CIT/CCIT (TDS) within the time limit specified in subsection (2) of section 197A, that is a distinct omission or default for which a penalty is prescribed. The assessee's claim is accepted that since he had the declarations of the payees in the prescribed form before him at the time when the interest was paid, he was not liable to deduct tax therefrom under section 194A". Since the issue is squarely covered in favour of the assessee by the said decision, appeal of the revenue is dismissed.

Revenue's appeal dismissed

ORDER

Per: Mahavir Singh:

This appeal by revenue is arising out of order of CIT(A)-XXXVI, Kolkata in Appeal No.546/CIT(A)-XXXVI/Kol/Wd-56(3)/08-09 dated 17.01.2011. Assessment was framed by ITO, Ward-56(3), Kolkata u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for Assessment Year 2006-07 vide his order dated 31.12.2008.

2. The first issue in this appeal of the revenue is against the order of CIT(A) deleting the addition made by Assessing Officer by invoking provisions of section 40(a)(ia) read with section 194C(3) sub-clause (i) of the Act inspite of non-filing of Form No. 15J under Rule 29D of I. T. Rules, 1962. For this, revenue has raised following ground no.1:

"1) That on the facts and circumstances of the case, the Ld. CIT(A) erred in law in deleting addition of Rs.28,01,585/- u/s. 40(a)(ia) of the I. T. Act, 1961 in spite of non filing of Form No.15J as required under third proviso to clause (i) of sub-section (3) of section 194C of the I. T. Act, 1961, read with Rule 29D of I T Rules, 1962."

3. Brief facts leading to the above issue are that assessee in the business of transportation of goods through hired vehicles, whom payment was made aggregating to Rs.28,01,588/- in respect of 42 vehicles and actual payment is exceeding Rs.50,000/- per vehicle. The assessee before Assessing Officer claimed that he has received Form 15-I from vehicle owners for nondeduction of tax, hence he has not deducted TDS in view of provisions of section 194C(3)(i) of the Act. Assessing Officer did not accept the claim of the assessee as he has failed to file

Form No. 15-I with the concerned Commissioner of Income-tax and, therefore, the authenticity of receiving of Form No. 15-I from the truck owners has not be discharged. Accordingly, he disallowed hire charges expenses of Rs.28,01,585/- by invoking provisions of section 40(a)(ia) of the Act. Aggrieved, assessee preferred appeal before CIT(A) who deleted the addition by giving following finding in para 3.4 of his appellate order:

"3.4. I have duly considered the submission of the appellant in the light of materials placed before me and case laws referred to. The issue in hands is whether Form No. 15-I is to be taken as non-est for non-filing of Form No. 15-J with the jurisdictional CIT. The Act does not say so. Moreover, Form No. 15-I comes into effect before the actual payment or crediting to account takes place, whereas, the due date for furnishing the particulars in 15-J is 30th June following the financial year, in respect of all the declarations in Form No. 15-I received by the contractor during that financial year. In the instant case, the appellant was to stop deduction of tax on payments as and when he received Form No. 15-I from the sub-contractor. Had the A.O. doubted about existence of Form No. 15-I at the time of making payments to the sub-contractor by the appellant, he got ample opportunity of examination of the same during remand proceedings. The A.O. has not pointed out any defect in any Form No. 15-I, copy of which was sent to him for examination during remand proceedings. Under the circumstances, I find that the addition made by the A.O. of Rs.28,01,585/- is unjustified and misconceived and therefore, deleted."

Aggrieved, now revenue is in appeal before us.

4. At the outset, Ld. Counsel stated that this issue is squarely covered in favour of assessee by the decision of ITAT, Mumbai "F" Bench in the case of *Shri Vipin P. Mehta Vs. ITO, ITA No.3317/Mum/2010* for Assessment Year 2006-07 dated 20th May, 2011, He also relied on the similar view taken by Ahmedabad "A" Bench in the case of *Valibhai Khanbhai Mankad Vs. Dy.CIT (OSD) in ITA No.2228/Ahd/2009* for Assessment Year 2006-07 dated 29.4.2011. Ld. DR, on the other hand relied on the order of Assessing Officer.

5. We have heard rival contentions and gone through facts and circumstances of the case. We find that admittedly in the present case before us, the assessee has obtained Form 15-I and filed during the course of assessment proceedings but only failed to file before the concerned Assessing Officer. As the issue is covered in favour of assessee by the decision of ITAT, Mumbai "F" Bench in the case of Shri Vipin P. Mehta (supra), wherein the Tribunal vide paras 6, 7 and 8 has observed as under:

"6. We have carefully considered the facts and the rival contentions. Section 194A provides for deduction of tax from the interest paid by the assessee, at the appropriate rate. Section 197A(1A) provides that notwithstanding anything contained in section 194A no deduction of tax shall be made under the section if the payee of the interest furnished to the person responsible for paying the interest, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which the interest is to be included will be nil. Sub-section (2) provides that the person responsible for paying interest shall deliver or cause to be delivered to the CCIT or CIT one copy of the declaration submitted by the payee of the interest to the assessee on or before the seventh day of the month next following the month in which the declaration was furnished to him. If the person responsible for paying the

interest (i.e. the assessee) does not comply with sub-section 2 of section 197A, he is liable to pay penalty of Rs. 100/- for every day during which the failure continues. Such penalty can be imposed only by the Commissioner or Chief Commissioner of Income Tax as stated in clause (b) of sub-section 3 of Section 272A and sub-section 4 requires that an opportunity shall be given to the assessee before any penalty order is passed.

7. In the present case the claim of the asses see is that at the time of paying the interest to the 34 persons mentioned in the assessment order, he had before him the appropriate declarations in the prescribed form from the payees stating that no tax was payable by them in respect of their total income and therefore tax need not be deducted from interest under section 194A, and in the light of these declarations he had no option but to make the payment of interest without any tax deduction. If the claim is true then the contention must be accepted because under sub-section (IA) of section 197A, if such a declaration is filed by the payee of interest, no deduction of tax shall be made by the assessee. The revenue authorities have doubted the assessee's version because according to them it is only when the Assessing Officer proposed the disallowance of the interest by invoking the section 40(a) (ia) in the course of the assessment proceedings that the assessee filed the declarations claimed to have been submitted to him by the payees of the interest, in the office of the CIT(TDS) as required by sub-section 2 of section 197A. Apart from this inference, there is no other evidence in their possession to hold that the declarations were not submitted by the payees of the interest to the assessee at the time when the payments were made. Without disproving the assessee's claim on the basis of other evidence, except by way of inference, it would not be fair or proper to discard the claim. The Assessing Officer has not recorded any statements from the payees of the interest to the effect that they did not file any declarations with the assessee at the appropriate time or to the effect that they filed the declarations only at the request of the assessee in September/October, 2008. In the absence of any such direct evidence, we are unable to reject the assessee's claim. The Assessing Officer has stated in para 4.4 of the assessment order that he found that some of the loan creditors were having taxable income but still the assessee had submitted declarations from them in form no. 15G. Unless it is proved that these forms were not in fact submitted by the loan creditors, the assessee cannot be blamed because at the time of paying the interest to the loan creditors, he has to perforce rely upon the declarations filed by the loan creditors and he was not expected to embark upon an enquiry as to whether the loan creditors really and in truth have no taxable income on which tax is payable. That would be putting an impossible burden on the assessee. That apart sub-section 1A of Section 197A merely requires a declaration to be filed by the payee of the interest and once it is filed the payer of the interest has no choice except to desist from deducting tax from the interest. The sub-section uses the word "shall" which leaves no choice to the assessee in the matter. In the case of payment of leave travel concession and conveyance allowance to employees who are liable to deduct tax from the salary paid to the employees under section 192, the Supreme Court has held in CIT Vs. Larsen & Toubro Ltd. (2009) 313 ITR 1 = ***(2009-TIOL-06-SC-IT)****, that the assessee was under no statutory obligation under the Act or Rules to collect evidence to show that the employee had actually utilized the money paid towards leave travel concession/conveyance allowance. The position is stronger under section 197A which does not apply to section 192, but which provides in sub-section (1A) that if the payee of the interest has filed the prescribed form to the effect that he is not liable to pay any tax in computing his total income, the payer shall not deduct any tax. The subsection does not impose any obligation on the payer to find out the truth of the declarations filed by the payee. Even if the assessee has*

delayed the filing of the declarations with the office of the CIT/CCIT (TDS) within the time limit specified in subsection (2) of section 197A, that is a distinct omission or default for which a penalty is prescribed. Section 273B provides that no penalty shall be imposed under any of the clauses of sub-section (2) of section 272A for the delay, if the assessee proves that there was reasonable cause for the same. We have already seen that under sub-section (4) of section 272A, no penalty can be imposed unless the assessee is given an opportunity of being heard. All these provisions indicate that the failure on the part of the assessee, who is the payer of the interest, to file the declarations given to him by the payees of the interest, within the time limit specified in sub-section (2) to section 197A is distinct and separate and merely because there is a failure on the part of the assessee to submit the declarations to the income-tax department within the time limit, it cannot be said that the assessee did not have declarations with him at the time when he paid the interest to the payees. That would be a separate matter and separate proof and evidence is required to show that even when the assessee paid the interest, he did not have the declarations from the payees with him and therefore he ought to have deducted the tax from the payment. No such evidence or proof has been brought by the department.

8. For the aforesaid reasons, we accept the assessee's claim that since he had the declarations of the payees in the prescribed form before him at the time when the interest was paid, he was not liable to deduct tax therefrom under section 194A. If he was not liable to deduct tax, section 40(a)(ia) is not attracted. There is no other ground taken by the income tax authorities to disallow the interest. We therefore accept the ássessee's appeal and delete the disallowance of interest of Rs.7,87,291/-.."

Since the issue is squarely covered in favour of the assessee by the decision in the case of Vipin P. Mehta (supra), we confirm the order of CIT(A) and this issue of revenue's appeal is dismissed.

6. The next issue in this appeal of the revenue is against the order of CIT(A) deleting the addition made by Assessing Officer by invoking provisions of section 40A(3) of the Act. For this, the revenue has raised following ground no.2:

"2. That on the facts and circumstances of the case the Ld. CIT(A) erred in law deleting addition of Rs.16,82,066/- made by A.o. u/s. 40A(3) in violation of extant provisions of law."

7. We have heard rival contentions and gone through facts and circumstances of the case. We find that Assessing Officer made disallowance u/s. 40A(3) of the Act for payments made to drivers/sub-contractors, who are agents of assessee. The Assessing Officer disallowed a sum of Rs.16,82,066/- as according to him cash payment in a day exceeding Rs.20,000/- is the subject matter of disallowance. The CIT(A) deleted the disallowance by holding that for the relevant assessment year, which is prior to the amendment w.e.f. Assessment Year 2009-10, where aggregate of cash payment in a day exceeding Rs.20,000/- is subject matter of disallowance, position during Assessment Year 2006-07 speaks of single cash payment in a day exceeding Rs.20,000/-. According to CIT(A), all cash payments in a day during one occasion did not exceed the prescribed limit of Rs.20,000/- although such payment in a day in aggregate exceeds Rs.20,000/-, provision of section 40A(3) of the Act is not attracted. We find that even Assessing Officer in his remand report admitted this

position and the remand report no. ITO/W-56(3)/Kol/Remand Report/09-10/276 dated 12.8.2009 , wherein he admitted as under:

"As regards the addition of Rs.16,52,066/- u/s. 40A(3) I may submit that the payments were made to the drivers/sub-contractors who are nothing but agents of the assessee. Payment to the agent of the assessee in cash exceeding Rs.20,000/- is permissible in view of Rule 6DD(1) of the Income Tax Rules, 2006. The assessee made payment exceeding Rs.20,000/- otherwise than by A/c. Payee Cheques or A/c Payee Bank Draft to the drivers/sub-contractors who are nothing but agent of the assessee. In view of provisions contained in Rules 6DD(1) such payments are permissible. In view of the foregoing legal position I submit that the payment to drivers/sub-contractors (who are agents of the assessee) are permissible in terms of the above Rule."

In remand report the Assessing Officer has admitted the position that single payment in a day should not exceed Rs.20,000/- and in this case, there is no instance that single payment is exceeding Rs.20,000/-. Accordingly, we confirm the order of CIT(A) and this issue of revenue's appeal is also dismissed.

8. In the result, the appeal of the revenue is dismissed.

9. Order pronounced in open court on 5.8.2011.